

SOUTH AFRICA / JUDGMENT

King v Minister of Police (EL: 801/10, ECD: 1701/10) [2012] ZAECELLC 8 (15 May 2012)

[2012] ZAECELLC 8

COURT

Eastern Cape High Court, East London Local Court

BEFORE

J.E Smith

CASE / FILE NUMBER

EL: 801/10, ECD: 1701/10

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE

DIVISION, EAST LONDON

In

the matter between:

Case no: EL: 801/10

ECD: 1701/10

Date Heard: 09/05/12

Date delivered:

15/05/12

NOMEZA KING N.O.

.....PLAINTIFF

and

MINISTER OF POLICE

FOR THE REPUBLIC

OF SOUTH AFRICA

.....DEFENDANT

JUDGMENT

SMITH J:

- [1] Nosipho MaryAnn King instituted civil action against the Minister of Police for damages suffered as a result of an assault upon her by a member of the South African Police Services on 25 January 2010. She was 44 years old at the time. Ms King initially claimed an amount of R1.8 million, under various headings of damages, including general damages for pain and suffering and contumelia. The other claims, which related to future loss of earnings and past and future medical expenses, have since been abandoned. Ms King has in the meantime passed away and her daughter, Nomeza King, who is also the executor of her estate, has been substituted as Plaintiff.
- [2] At the hearing of the matter the merits were conceded by the Defendant and I have ordered that the Defendant is liable to compensate the Plaintiff for such damages as she may be able to prove in due course.
- [3] The parties did not call any witnesses in respect of quantum and I am required to determine reasonable damages on the bases of the following admitted

facts:

Ms King was assaulted by a court orderly, one Inspector Shabalala, at the Magistrate's Court building in East London, during court hours and in full view of members of the public and the media;

Several photographs were taken by the media and these were published in the Daily Dispatch and Sun newspapers respectively;

The colour photo which was published in the Daily Dispatch, depicts Ms King with an open wound on the right side of her head and blood streaming down her right cheek;

(d) A colour photo, which appeared in The Sun under the heading:

"Klapped in court... by a cop!", depicts Ms King being helped by a uniformed police officer and a member of the public to board an ambulance;

Another colour photo, which had been downloaded from the Daily Dispatch website, depicts a bloodied Ms King with an almost naked upper body (and apparently only wearing a bra), pointing to a wound on her right upper thigh;

The contents of a medicolegal report compiled by Dr Deon Le Roux, a neurosurgeon, have also been admitted. This report was compiled by Dr Le Roux on the basis of an examination which took place on 27 July 2011, some 18 months after the assault. Dr Le Roux concluded that Ms King had sustained only superficial and minor injuries of the skin, that she did not suffer any disability

or loss of amenities as a result of the injuries and that her life expectancy remained unchanged. He had noted however that she complained of intermittent dizziness, which was mostly weather related, as well as related headaches. He also noticed a swelling on her head;

It is common cause that Ms King had sustained the following injuries as a result of the assault:

- (i) abrasions on both the right elbow and right thigh;
 - (ii) bruises on the right breast, left chest, both sides of her back, as well as the right hand;
 - (iii) bruises, open wounds and tenderness on the right arm;
 - (iv) haematomae on the left back and left eye; and
 - (v) lacerations (all about 2 cm each) on the scalp, left eye and lower leg.
- (h) The clinical records relating to Ms King's admission and treatment at the Frere Hospital were also admitted. These notes evince that Ms King was admitted to the Frere Trauma Unit at 15H30 on the 25th of January 2010. She was fully conscious and awarded fifteen on the Glasgow Coma Scale. She had the injuries which are listed above,

received appropriate treatment in the casualty unit and the lacerations were sutured. She was discharged and given analgesics and

antibiotics. She however returned three days later and complained of dizziness, headaches and vomiting.

[4] It is trite that the assessment of general damages for pain, suffering and shock is a subjective inquiry which depends, inter alia, on the time, degree and intensity of the discomfort and suffering. In determining a fair sum our courts generally have regard to comparable previous decisions. While this is a salutary practice which ensures consistency and fairness, no two cases are the same and courts should guard against slavishly adhering to precedents to the extent that their discretions may be impermissibly fettered. (*Protea Assurance Co Ltd v Lamb* 1971 (1) 530 (A) at 535 A536B). An award in respect of contumelia, which relates to the impairment of the dignitas of a person is also made ex aequo et bono and any aggravating or mitigating circumstances are taken into account in order to arrive at a fair sum.

[5] Mr Ntsaluba, who appeared for the Plaintiff, submitted that an amount of R150 000.00 would be fair under the circumstances. He relied in this

regard on *Peterson v Minister of Safety and Security* 2011 (6K6) QOD (ECG). In that matter Plasket J awarded damages in the amount of R120 000 (present day value being R139 000.00) for the assault by a police officer on a prisoner. The learned judge was particularly outraged by the conduct of the policeman which he described as thuglike and disgraceful. The plaintiff had suffered wounds on the head and jaw and widespread abrasions on the back, shoulder blades and buttocks. While the plaintiff did not suffer permanent injuries, the learned judge took into account that he had suffered pain for a few days after the assault.

- [6] Mr Ndzondo, who appeared for the Defendant, submitted that damages between R90 000.00 and R100 000.00 would be fair and reasonable under the circumstances. Mr Ndzondo relied for his submission in this regard on *Bennet v Minister of Police and Another* 1980 (3) SA 24 (CPD), where damages in the amount of R60000 (2011 value being R15 000) and *Ramakulukusha v Commander, Venda National Force* 1989 (2) SA 813 (VSC), where the court awarded damages in the amount of R15 000.00 (the 2010 value being R96 000.00).
- [7] I am of the view however that these cases are not very helpful in determining a reasonable sum of damages in this matter. Both these cases were decided before the adoption of the Constitution and under entirely different political and socioeconomic circumstances. It is settled law that our courts now generally tend to award higher damages in the light of the fact that rights relating to, inter alia, privacy, bodily integrity and dignity are now entrenched (and protected) by the Bill of Rights. Violations of these rights are generally regarded by our courts in a much more serious light than was the case previously. I am entitled to have regard to this tendency when comparing the damages awarded in the older cases. See: *De Jongh v Du Pisanie* NO 2004 (2) All SA 565 (SCA), at 583 paragraphs 64 and 65. The Peterson decision (*supra*) is in my view therefore a more relevant and helpful precedent.
- [8] The circumstances of the assault upon Ms King are particularly repulsive. She was assaulted, amongst others, with a stick or baton and in full view of members of the public and the media. Although her injuries were described by Dr Le Roux as being superficial, the photos which were taken immediately after the assault suggests that it was not merely a minor scuffle, but rather a relatively serious assault. Ms King's humiliation was further exacerbated by the fact that the colour photos depicting her in this embarrassing situation were splashed in at least two newspapers with extensive circulations. One of these photos, which had been placed on the website of the Daily Dispatch, depicts her in a humiliatingly seminaked condition. It is difficult to conceive of an assault that could have taken place under more degrading circumstances. The conduct of Inspector Shabalala was particularly reprehensible and repulsive. He had attacked a defenceless woman on the flawed and flimsy pretext that she had caused a commotion in court. His actions were brazen beyond belief and he had paid scant regard to the fact that the assault was witnessed by members of the public and the media. Members of the police services have a constitutional and statutory duty to protect the public. While they are required to keep the peace and enforce the law in appropriate circumstances, they are by law required to do so with the necessary restraint, with due regard to constitutionally entrenched human rights and to use force only where it is proportional to the unlawful act which they are required to stop. Shabalala has acted with contemptuous disregard for these venerable and established legal principles. I am however mindful that damages should not be decided in spasms of indignation, but rather on the basis of the abovementioned legal principles.

- [9] While I am somewhat at a disadvantage in determining the exact extent and duration of her pain and suffering, I have taken into account that the Frere Hospital clinical records show that Ms King complained of pain and discomfort three days after the assault and that she still complained of related headaches when she saw Dr Le Roux some eighteen months later.
- [10] For these reasons I am of the view that an amount of R140 000.00 in respect of general damages is justified.
- [11] Mr Ndzondo was constrained to concede that costs should follow the result. He also accepted that the qualifying fees of Dr Le Roux should be included in those costs.
- [12] Insofar as the Plaintiff seeks to have two former employees of the Daily Dispatch declared as necessary witnesses, Mr Ndzondo submitted that because the matter had not been ready for trial the Plaintiff was not entitled to consult with, and have those witnesses on standby, on the assumption that the matter would indeed proceed. I do not agree with this submission. Both parties were equally to be blamed for the fact that the Rule 37 minute had not been filed. The Plaintiff was however entitled to approach the court for an indulgence in this regard and to have her witnesses available and ready to testify in the event of the court granting the indulgence.
- [13] In the result the following order shall issue:

The Defendant is ordered to pay the Plaintiff, in her official capacity as executor of the estate of the late Nosipho MaryAnn King, the sum of R140 000.00 as and for general damages;

The Defendant is ordered to pay the costs of this action on the High Court scale, such costs to include the qualifying fees of Dr Deon Le Roux, together with interest on such costs at the legal rate from a date 14 days after the date of the Taxing Master's allucatur to the date of payment; and

Gcina Ntsaluba and Mlondolozu Mbolo are declared necessary witnesses.

J.E SMITH

JUDGE OF THE HIGH COURT

Appearances

Counsel for the Plaintiff : Advocate Ntsaluba

Attorney for the Plaintiff : Mgweshe Ngqeleni

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Ref: 719/10P13

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